

GILBERT E. GONZALES

IBLA 94-826

Decided January 21, 1997

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, declaring mining claims abandoned and void. NMMC 120227 through NMMC 120229.

Affirmed.

1. Mining Claims: Abandonment–Mining Claims: Rental or Claim Maintenance Fees: Generally–Mining Claims: Rental or Claim Maintenance Fees: Small Miner Exemption

Mining claims were properly declared abandoned and void for failure to timely pay or seek exemption from rental fees although the claimant denied he was a tenant on the property.

APPEARANCES: Gilbert E. Gonzales, Questa, New Mexico, for himself.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Gilbert E. Gonzales has appealed from a July 20, 1994, decision of the New Mexico State Office, Bureau of Land Management (BLM), declaring unpatented mining claims NMMC 120227 through NMMC 120229 abandoned and void for failure to pay rental fees or submit timely certificates of exemption from payment for the 1993 and 1994 assessment years. BLM's decision declared the claims abandoned and void because requirements of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 (Act), P.L. 102-381, 106 Stat. 1374, 1378-79, had not been met. BLM explained that, under regulations adopted pursuant to the Act, in order to maintain his mining claims, Gonzales needed to pay a \$100 rental fee for each claim or submit a certification of exemption from payment of rental fees (small miner exemption) for both the 1993 and 1994 assessment years on or before August 31, 1993. BLM found that he had not filed exemptions for both years as required by the Act, nor had he paid rental fees.

In his statement of reasons on appeal (SOR), Gonzales requests "[r]eimbursement of filing, recording, notary, and assessment fees in the amounts invested since 1982 to 1993, approx. 6,000.00." He argues:

Based on merits, appellant was denied the following:

- A. Due process.
- B. Public input (were claimants solicited and considered on change for policy)
- C. Dated Dec. 16, 1992 (Refer to documents)
 - 1. Decision referred to PC Dec. 16, 1992 was made totally arbitrarily
- D. Serious issues were not addressed, such as,
 - 1. On rental bases, does BLM regulations interpreted as Landlord tenants, according to New Mexico, Local, and County statutes
 - 2. Reg. 43 CFR 3833 and following stated in state BLM office July 20, 1994 from MS. Ida T. Viareal (copy enclosed) are structure and applied solely as mining claims and not rental claims and not as rental properties
 - 3. Development on rental property
 - 4. Current claimant according to CFR reg. has no clear title to mining claims therefore a third party may get involved BLM will collect all filing, recording, notary, and assessment fees, from several claimants on same claims.

Attached to Gonzales' SOR is a copy of a notice to miners from BLM setting forth information about the changes in assessment work requirement as a result of the "new law."

It seems that Gonzales is arguing he was denied due process of law by BLM's decision, that he feels he was not given a chance to comment on the change in "policy," and that a "rental" fee is not an appropriate assessment on his mining claims because he is not a "tenant" on the property. We are unable to find Gonzales' reference to "Decision referred to PC Dec. 16, 1992 was made totally arbitrarily." We have searched BLM's official case file and find no document dated December 16, 1992, nor any document referring to a decision of that date. Nor has appellant supplied us with any document or decision bearing that date, although he indicates parenthetically that the document is attached to his SOR.

An appellant challenging a decision must show error in the decision; one who does not state a reason for appeal and support his allegation with argument or evidence showing error cannot prevail; conclusory allegations

of error, standing alone, do not suffice. This Board will not consider arguments advanced in an SOR that do not support with some particularity an allegation of error. See Estill Estep, 130 IBLA 291, 293 (1994), and cases cited therein. We therefore are unable to consider Gonzales' due process argument or his reference to the December 16, 1992, document because he has not provided us with particular allegations or arguments tending to show any such error by BLM.

A provision of the Act, relating to mining established that "each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993." 106 Stat. 1378. The Act contained an identical provision establishing rental fees for the assessment year ending at noon on September 1, 1994, that also required payment of the \$100 rental fee on or before August 31, 1993. 106 Stat. 1378-79. The Act further provided, under certain circumstances, for an exemption from the payment of rental fees for claimants holding 10 or fewer claims, the small miner exemption. Id. Additionally, the Act directed "[t]hat failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant." 106 Stat. 1379.

On July 15, 1993, the Department promulgated regulations implementing the rental fee provisions of the Act. 58 FR 38186. These regulations required a claimant to pay, on or before August 31, 1993, a nonrefundable rental fee of \$100 for each mining claim, mill site, or tunnel site located on or before October 5, 1992, for each of the assessment years beginning on September 1, 1992, and September 1, 1993, or a combined rental of \$200 per claim. 43 CFR 3833.1-5(b) (1993). The regulations also included sections governing rental fee exemption qualifications, 43 CFR 3833.1-6 (1993), and rental fee exemption filing requirements. 43 CFR 3833.1-7 (1993). The regulations further provided that failure to pay the required rental fee or to timely file the required rental fee exemption documents "shall be deemed conclusively to constitute an abandonment of the mining claim, mill site, or tunnel site, which shall be void." 43 CFR 3833.4(a)(2) (1993). If a mining claimant does not request and qualify for a small miner exemption from the rental fee requirement, failure to pay the fee in accordance with the Act and regulations results in a conclusive presumption of abandonment. Lester W. Pullen, 131 IBLA 271, 272-73 (1994). The Department has no authority to excuse lack of compliance with the rental fee requirement. Lee H. & Goldie E. Rice, 128 IBLA 137, 141 (1994).

Appellant argues that he was not permitted public comment on the regulations, and that the regulations impermissibly characterize the \$100 fee in question as a rental fee. Proposed rules were published in the Federal Register on March 5, 1993. Public comment was permitted on the proposed rules through April 19, 1993. See 58 FR 12878. The final rule, published

in the Federal Register on July 15, 1993, notes that 240 comments were received concerning the proposal, including 153 from individuals. See 58 FR 38186.

[1] Whether a rental fee was appropriate was questioned during the public comment period before the final 1993 rule went into effect, and was addressed by BLM in the Preamble to the July 15, 1993, final regulations. Therein, BLM stated: "Two comments questioned what a claimant is renting when paying the rental fee. The purpose of the provision in the Act is to require miners to pay for utilizing Federal land for mining or mine development activities before it is patented." 58 FR 38187 (July 15, 1993). The regulations assessing rental fees were duly promulgated. Such regulations have the force and effect of law and are binding on the Department. ANR Production Co., 118 IBLA 338, 343 (1991).

Gonzales also requests that he be reimbursed for "filing, recording, notary, and assessment fees in the amounts invested since 1982 to 1993, approx. 6,000.00." He has provided no evidence or argument nor shown any authority on which such a refund or claim for damages could be based. The fees appellant paid to hold and work his claims before BLM found them to be abandoned and void were required by the mining and public land laws, and he was responsible for their payment if he wanted to maintain his claims. Fees lawfully collected in order to obtain a right to use public lands are not refundable where the user has derived benefit from the use. See, e.g., Charles J. Babington, 17 IBLA 435, 440 (1974). This request must therefore be denied.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Amess
Administrative Judge

I concur:

David L. Hughes
Administrative Judge

